

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 546 of 2006.

THURSDAY THIS THE 24th DAY OF APRIL, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

S. Sukumari Amma
Trained Graduate Teacher (Maths)
Kendriya Vidyalaya No.1, Calicut.
Residing at Kizhakke Valliazhathu
Mararikulam North PO, Alappuzha District.
Kerala

Applicant

By Advocate Mr.P. Ramakrishnan

Vs.

1 Assistant Commissioner
Kendriya Vidyalaya Sangathan
Regional Office, Cochin Regional
IIT Campus, Chennai-600 036

2 Joint Commissioner (Administration) & Appellate Authority
Kendriya Vidyalaya Sangathan, 18, Institutional Area
Shaheed Jeet Singh Marg, New Delhi-110 016


3 Union of India represented by the Secretary
Human Resources Development, Government of India
New Delhi.

Respondents

By Advocate Shri Shafik M.A. for R 1 & 2
Advocate Mr. TPM Ibrahim Khan, SCGSC for R 3

ORDER

HON'BLE DR. K.S. SUGATHAN ADMINISTRATIVE MEMBER



This OA raises an important issue, namely, whether a lower pass percentage secured in a public examination by the students of a class can be construed as a misconduct on the part of the teacher. The applicant in this OA is working as a Trained Graduate Teacher (Maths) in Kendriya Vidyalaya, Kozhikode. Prior to her present posting she was working as Maths Teacher in Kendriya Vidyalaya No.1 in Cochin. Vide memorandum dated 10.11.2003 the

applicant was charge sheeted by the respondent No.1 on the ground that she was responsible for the poor results secured by XClass students in Maths in the CBSE examination in the years 2001, 2002 and 2003. The single article of charge read as follows:

Article-I

"That Smt. Sukumari Amma while functioning as TGT (Maaths) in Kendriya Vidyalaya No.1, Cochin (presently working at Kendriya Vidyalaya No.1, Calicut) handled Mathematics for Class X during the years 2000-1, 2001-02 and 2002-03 and hence was responsible for the results of her students in All India Secondary School Examinations. The pass percentage in Mathematics for students of Kendriya Vidyalaya No.1, Cochin in All India Secondary School Examinations 2001, 2002 and 2003 was 72.4%, 74.3% and 66.67% respectively. The consistent poor performance below of 85% is indicative of her lack of devotion to duty which is a misconduct under Rule 3(1)(ii) of CCS (Conduct) Rules, 1964 as applicable to the employees of Kendriya Vidyalaya Sangathan, rendering her liable for disciplinary action."

2 The applicant replied to the charge sheet on 24.11.2003 and stated that she had taken special efforts to secure good results, but because of various factors such as ill health, slow understanding and poor retention power of some of the students, the results were disappointing. She also stated that she never neglected her duties. Subsequently, the respondents appointed an enquiry officer to conduct an oral enquiry as required under Rule 14 of CCS CCA Rules. The enquiry officer submitted a report on 25.2.2004 in which he concluded that on the whole while the teacher's incompetence to teach Mathematics in Class X stands exposed, any wilful negligence in the discharge of official duties with dishonest motive does not appear to stand established in the enquiry. The disciplinary authority however remanded the matter for fresh enquiry the ground that there were many deficiencies in the manner in which the enquiry was conducted. Thereupon a fresh enquiry was conducted by the same enquiry officer and he submitted a report on 12.10.2004. The enquiry officer rectified the deficiencies pointed out by the disciplinary authority, but stated in his report dated 12.10.2004 that no fresh evidence has been adduced by the Presenting Officer that warrants modification of the conclusions arrived at in the report dated



25.2.2004. On the basis of the enquiry report and the subsequent representation submitted by the applicant the respondent No.1 imposed the penalty of withholding of three increments without future effect vide her order dated 8.2.2005. The subsequent appeal submitted by the applicant was rejected by the respondent No.2 by her order dated 20.4.2006.

3 The respondents have contested the OA. They have contended in their reply that the consistent poor performance of the students was attributable to the applicant's lack of devotion to duty, which is a clear misconduct under clause 3 (1)(ii) of CCS Conduct Rules 1964 as applicable to the employees of the Kendriya Vidyalaya. All the necessary formalities and procedures were observed before imposing the penalty. In reply to the enquiry report the applicant had sought pardon and stated that she produced 98% results in Class X Board examination in KV No.1 Calicut for the year 2004. It is therefore very clear that the applicant is capable of producing excellent results, but she did it only after the disciplinary action was taken. The lack of interest in teaching mathematics to children as exhibited by the applicant continuously for three years does constitute dereliction of duty which in turn constitutes misconduct. Poor results continuously for three years has to be attributed to the poor performance of the teacher. Other reasons cited by the applicant for the poor result are not relevant. In the rejoinder filed by the applicant she had contended that earnest efforts were made to get maximum results. The authorities failed to trace the root cause for the poor results.

4 We have heard the learned counsel for the applicant Shri Pratap Abraham and the learned counsel for respondent No.1 and 2 Shri M.A.Shafik, and Shri V.A.Shaji for TPM Ibrahim Khan for respondent No.3. We have also perused the documents carefully.

5 The issue for consideration is whether lower pass percentage in a public examination can be construed as misconduct on the part of the teacher attracting penalty. The respondents have vehemently contended that it is a misconduct under Rule 3 (1)(ii) of CCS Conduct Rules. We have perused the relevant rule.



It is reads as follows:

“3.1– Every government servant shall at all times
(ii)- maintain devotion to duty”

6 We are not convinced that lower pass percentage in a public examination can be taken as a parameter indicating lack of devotion to duty by a teacher. The performance of the students in public examination depends on various factors such as the ability to comprehend the subject, amount of hard work put in during preparation, retention power, command over the language, state of mind on the day of the examination and analytical ability particularly in a subject like Mathematics. To prove lack of devotion to duty, the respondents should have produced evidence to show that the teacher had not taken the required number of classes or not completed the syllabus and so on. On the other hand the applicant had cited detailed reasons in respect of students who had failed in the examination. These reasons are ill health, joining the class in the middle of the term, demonstrated unwillingness to learn, priority given to attending national games, language problems and parents preferring to take the student for all-India LTC tour against the advice of the teacher. The following extract from the enquiry officer's report dated 25.2.2004 indicates clearly the various factors at work that may have influenced the poor results:


“ In March 2002 Smt. S. Sukumari Amma had been assigned the arduous task of teaching Mathematics to 70 students of Class X, a tall order for a teacher of arguably limited teaching talents. Further, the students were put under her charge only in June end by which time the studies of an entire month of April was over. As such, the time available to her to train the weak students to face the Board Examination got reduced to that extent. There were two students Gokul Das and Bindhya Babu with behavioural maladjustment problems. Mas. Pawan Singh Bisht's absence in Class due to participation in sports and games till the conclusion of the National games in November 2001 was a factor that contributed to his failure which was beyond her control. On the whole it appears that Smt. S. Sukumari Amma was severely handicapped in her efforts to produce good results in Mathematics in 2002, with factors some of which were genuinely inimical to healthy class room learning environment. The observation of a failed student's parent on being asked not to take the student on all India tour in the middle of the academic year, that the student can pass the subject in compartment examination but dropping the tour for the sake of the student would be a big financial loss for him on LTC front betrays the lack of ambition and unwise priorities assigned by the parent community of KV No.2 Cochin.”



7 It is also to be noted that the enquiry officer had reported on 25.2.2004 that no wilful negligence is established. In his report dated 12.10.2004 submitted after the de novo enquiry he has stated that no new evidence has been produced to modify the conclusions mentioned in his report dated 25.2.2004. Effectively thus the charge is not proved in the enquiry. However the enquiry officer has gone on to recommend that a minor penalty may be imposed on the applicant. The following extract from the enquiry officer's report dated 12.10.2004 makes interesting reading:

"VIII. Under the above circumstances, the inquiry was wound up. No fresh evidence has been adduced by the Presenting Officer that warrants modification of the conclusions arrived at in the report. No. F.INQ/KV-ADR/2003-04/1084, dated 25.2.2004 submitted at the end of the first inquiry while the result produced by the charged officer in AISSE(X) 2004 (98.14%) forming part of her reply to the brief of the Presenting Officer given at the end of the first inquiry goes to strengthen her stand that the adverse circumstances that prevailed in KV No.2 Cochin in 2001, 2002 & 2003 played a key role in the poor results. While accepting that the circumstances in KV NO. 2, Cochin may not have been very ideal or congenial for producing excellent results the improvement in results in AISSE 2004 produced by Smt. Sukumari Amma could also be attributed to the impact of the disciplinary proceedings initiated against her. In the circumstances, the charged Officer may be given the benefit of doubt and be let off the hook with appropriate minor penalties that the Competent Authority might deem fit, putting her on the watch list for repetition of the kind of results produced by her in the past."

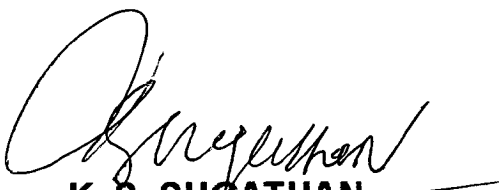
8 The above extract contains an observation by the enquiry officer that the excellent result obtained by Class X students in Calicut in 2004 is partly on account of the disciplinary action taken against the applicant. Such an observation is absolutely beyond the scope of the enquiry. The enquiry officer has to analyse the evidence presented before him and come to the conclusion whether the article of charge is proved or not proved. We are surprised to note that the enquiry officer has also recommended a minor penalty. We are constrained to point out that the enquiry officer has gone beyond his call of duty in recommending a penalty. In his report dated 25.2.2004 the enquiry officer has concluded that there is no wilful negligence. This finding has not been modified in the subsequent report. If the respondents did not agree with the finding of the enquiry officer on the article of charge, they ought to have issued a disagreement

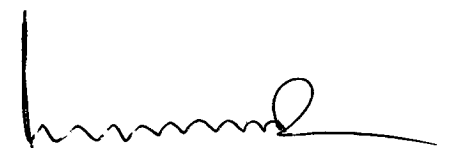


memo to the applicant. The respondents' action in accepting the recommendation of the enquiry officer to impose a minor penalty is totally arbitrary and illegal. It is stated in the order dated 20.4.2006 issued by the appellate authority that the applicant 'was responsible for the poor result of Class X of KV No.1 Cochin consecutively for the three years. 98.14% result produced by her in the year 2004 clearly demonstrated the fact that she had the capability to perform but she did not take her job seriously in the years 2001-2003.' These conclusions by the appellate authority are totally unwarranted from the material available on record. That the result in respect of the year 2004 was in respect of a different set of students in a different school has been totally overlooked by the appellate authority. The respondents have oversimplified the issue of low pass percentage by directly linking it to the conduct and capabilities of the teacher alone. On a careful assessment of the material available before us we are of the considered view that the article of charge itself is totally mis-conceived and therefore all the action taken pursuant to the charge is totally unsustainable.

9 For the reasons stated above, we have no hesitation in allowing the OA and quashing the penalty order dated 8.2.2005 issued by the disciplinary authority and the order dated 20.4.2006 issued by the appellate authority. The increments withheld by the respondents shall be released immediately and consequential benefits paid to the applicant within a period of three months from the date of receipt of copy of this order. No costs.

Dated 24th April, 2008


K. S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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